

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Raymond Chestnut,)	Civil Action No.: 1:22-cv-00467-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Officer Hollywood,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the Report and Recommendation (“R & R”)¹ of United States Magistrate Judge Shiva V. Hodges who recommends dismissing this action for failure to prosecute. *See* ECF No. 37.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of those portions of the R & R to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Neither party has filed objections to the R & R, and the time for doing so has expired.² In

¹ The Magistrate Judge issued the R & R in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

² Objections were due by October 30, 2022. *See* ECF Nos. 37 & 38. Plaintiff filed a motion for an extension of time to file a response to Defendant's [ECF No. 15] motion for summary judgment in which Plaintiff requests an additional thirty days to respond. ECF No. 40. Defendant filed his motion for summary judgment on April 1, 2022, and the Magistrate Judge entered an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff if he did not respond, Defendant's motion may be granted. ECF No. 16. Plaintiff's response was initially due on May 8, 2022, but the Magistrate Judge granted in whole or in part **four** motions for extension of time so that Plaintiff's response was due by September 19, 2022. *See* ECF Nos. 15-17, 19-20, 23-24, 26-27, & 32-33. When Plaintiff did not respond, the Magistrate Judge issued an order directing Plaintiff to advise the court whether he wished to continue the case by October 9, 2022, and advising Plaintiff that if he failed to respond, the Magistrate

the absence of objections to the R & R, the Court is not required to give any explanation for adopting the Magistrate Judge's recommendations. *See Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)).

Having found no clear error, the Court **ADOPTS** the Magistrate Judge's R & R [ECF No. 37] and **DISMISSES** this case with prejudice. The Court also **DENIES** Plaintiff's fifth motion for an extension of time to respond [ECF No. 40].

IT IS SO ORDERED.

Judge would recommend dismissal of this case for failure to prosecute. ECF No. 35 & 36. Plaintiff did not respond, and the Magistrate Judge issued the R & R recommending dismissal for failure to prosecute on October 13, 2022. ECF No. 37. Plaintiff's motion is dated October 6, 2022, but because Plaintiff was no longer incarcerated, Plaintiff's motion was not filed until it was received by the Clerk of Court on October 17, 2022, after the October 9 deadline and the entrance of the R & R. *See USA v. Chestnut*, No. 4:05-cr-01044-RBH-1 (D.S.C. Sept. 12, 2022) (noting Raymond Chestnut was released from custody on September 12, 2022); *Anderson v. Fed. Deposit Ins. Corp.*, 918 F.2d 1139, 1141 (4th Cir. 1990) ("[A] District Court should properly take judicial notice of its own records."); Raymond Edward Chestnut, Horry County Bookings, *available at* <https://www.horrycounty.org/bookings> (indicating Chestnut was released from J. Reuben Long Detention Center on September 12, 2022); *Tisdale v. S.C. Highway Patrol*, No. 0:09-1009-HFF-PJG, 2009 WL 1491409 at *1, n. 1 (May 27, 2009) ("The Court may take judicial notice of factual information located in postings on government websites."). Rule 6(b) of the Federal Rules of Civil Procedure provides that when an act must be done within a specified time, the court may, for good cause, extend the time on a motion made after the time has expired if the party failed to act because of excusable neglect. Although Plaintiff contends he has requested additional discovery information from Defendant, that request was postmarked October 14, 2022, and Plaintiff has not shown any reason why that information could not have been requested before the extended response deadline of September 19, 2022. ECF No. 41-1. Based on the foregoing, Plaintiff's fifth motion for an extension of time to file a response is denied.

Florence, South Carolina
November 3, 2022

s/ R. Bryan Harwell
R. Bryan Harwell
Chief United States District Judge